

CHAPTER 11 SPECIAL ASSESSMENTS

SECTION A - CONSERVANCY DISTRICTS

The provisions of IC 14-33-2 authorize the creation of conservancy districts for the purposes set out therein.

Freeholders who desire the establishment of a conservancy district must initiate proceedings by filing a petition in the office of the clerk of the circuit court of the county containing the most land within the proposed district. [IC 14-33-2-1]

To pay all necessary expenses of establishing the district, general, legal, and administrative costs, and costs incident to preparing the district plan, the court may order the auditor of the county in which the court is sitting to issue warrants to the district for funds necessary to meet these expenses. If two (2) or more counties contain land lying within the district the court shall order the auditors of the other counties to reimburse the paying county from their general fund by issuing warrants in such amounts as the court shall estimate to be reasonable in relation to the estimated benefits which the land within each county will receive from the operation of the district. [IC 14-33-7-15]

Any funds which may be advanced to the district from the general fund of the county or the economic development fund created by IC 4-4-7 shall be repaid promptly from funds received through the collection of any authorized tax or assessment. [IC 14-33-7-17]

Budget

A budget for the conservancy district shall be prepared and submitted at the same time and in the same manner and with such notice as are provided by the laws of the state relating to the preparation of budgets by civil cities and towns. Such budget shall be subject to the same review by the county tax adjustment board and the State Board of Tax Commissioners as exists under the general laws of the state relating to budgets of civil cities and towns. If the district is established in more than one county, the budget shall be certified to the auditor of the county in which is located the court that had exclusive jurisdiction over the establishment of the district; except that when one (1) of the counties contains a city of either the first or second class, which city is contained in whole or in part within the district, then the budget shall be certified to the auditor of that county containing such city; and said budget shall be subject to review at the county level only by the county tax adjustment board of said county. And, if the district is established in more than one (1) county, such notices provided shall be published in each county containing land within the district, and any taxpayer within the district shall have the right to be heard before the county tax adjustment board having jurisdiction. [IC 14-33-9-1]

Upon approval by the State Board of Tax Commissioners, the board of directors shall certify the tax levy to the auditors of any counties containing land within the district. [IC 14-33-9-5]

NOTE: In order not to overlook the tax levied, where a district is located in two or more counties, conservancy districts have been instructed to file a complete budget with the auditor of each county, although it may not be subject to review by the county board of tax adjustment of that county. If you fail to receive the budget or order fixing the tax rate, you should contact the officers of the conservancy district.

Special Benefits Tax Levy

In Official Opinion No. 57-1967, the Attorney General held that the special benefits tax levy should be imposed upon all real estate in the district which has an assessed valuation, including tax exempt property, such as charitable, educational and religious organizations; also, that the special benefits tax levy should be imposed upon the gross assessed valuation, without allowance of any deductions, such as the mortgage, age 65, veterans' and blind deductions.

The special benefits tax levy does not apply to real estate owned by the United States Government, the State of Indiana or any political subdivision within the state. (OAG 57-1967)

The county auditor shall enter all real estate in the county which is within the boundaries of the conservancy district in a separate section of the tax duplicate or in a separate duplicate. The gross assessed valuation of the real estate shall be multiplied by the rate of tax levied by the conservancy district to determine the tax payable which shall be collected and paid in the same manner and at the same time as property taxes are collected. The same provisions as to penalties and sale of property for delinquencies apply to the special benefits tax as apply to property taxes.

Collections are required to be settled by the county treasurer and distributed to the conservancy district at the time of making the June and December settlements.

Exceptional Benefits Assessments

If the appraisers have determined that there are exceptional benefits to some real property, the board of directors shall prepare an assessment roll from the appraisers' report as approved by the court. The assessment roll shall consist of a description of each parcel of real property exceptionally benefited, the name of the owner thereof, as is listed on the tax duplicate or described in the appraisers' report as approved by the court, and the amount of the assessment, one (1) copy of which assessment roll shall be recorded in the office of the recorder of each county wherein real property exceptionally benefited is located, one (1) copy shall be filed with the auditor of each county in which land of a district exceptionally benefited is located, and another copy of which shall be kept on file in the office of the conservancy district. Assessments for exceptional benefits shall be a lien upon each parcel of real property against which they are assessed from and after the date that such assessment is approved by the court. [IC 14-33-10-1]

The board of directors shall publish notice that the assessments are due and payable within sixty (60) days. Payment shall be made at the office of the board of directors or, if the court shall so order, at the office of the treasurer of each affected county. [IC 14-33-10-2(b)]

If the court orders that the exceptional benefits assessments shall be collected in the county treasurer's office, the assessment roll should be entered in a separate section of the ditch tax duplicate or in a special duplicate for that purpose and assessments collected and accounted for in the same manner as drainage assessment collections.

The owners of real property assessed for exceptional benefits shall have the right to make payment in full unless exceptional benefits are assessed annually and paid with special benefits taxes to the treasurer of the county. In the event that payment is made in full for such exceptional benefit, the board of directors shall note such payment on the assessment roll in its office, give a receipt to the landowner, paying the same, and also enter satisfaction of the lien of such assessment in the appropriate record in the office of the recorder where such assessment is recorded as heretofore provided. The payment of the assessment does not relieve the real property from being subject to any special benefits tax and from being subjected to an annual assessment for maintenance and operation based upon the original exceptional benefit assessment if any. [IC 14-33-10-2(c)]

Any assessment not paid in full shall be paid in annual installments over such period of time as is commensurate with the term of the bond issue or other financing as determined by resolution duly adopted by the board of directors of the district and interest shall be charged at the rate of ten percent (10%) per annum on the unpaid balance. All payments of installments, interest and penalties thereon shall be entered on the assessment roll in the office of the conservancy district (or county treasurer's office if ordered by the court). Upon payment in full of the entire assessment, including any interest and penalties thereon, the board of directors shall cause the lien thereof to be released and satisfied on the records in the office of the recorder of the county wherein the real property so assessed is situated. [IC 14-33-10-3]

The same penalties for delinquencies which apply to property taxes also apply to exceptional benefits assessments. If an installment or assessment is not paid when due the board of directors shall file the delinquency with the county auditor to be placed on the tax duplicate to be collected as state and county taxes are collected. If this delinquency is not paid at the next ensuing date for the semiannual payment of taxes the property shall be subject to sale in the same manner as real property on which there is delinquent property taxes. [IC 14-33-10-4]

SECTION B - DRAINAGE ASSESSMENTS

The Indiana Drainage Code, IC 36-9-27, governs the construction, reconstruction and maintenance of ditches and drains. The "Accounting Manual for Public Drainage Funds" prepared by the State Board of Accounts, a copy of which should be available in the county auditor's office, should be consulted on all questions pertaining to drainage funds.

SECTION C - DELINQUENT SEWER CHARGES

The provisions of IC 36-9-23-33 require delinquent sewer rates, charges, penalties and service fees to be certified to the county auditor for collection. Provisions of this law are as follows:

1. The officer charged with the collection of sewer charges shall, as often as the officer determines is necessary in a calendar year, prepare a list of delinquent fees and penalties and record a copy of such list with the county recorder, who shall charge a fee for recording in accordance with the fee schedule established in IC 36-2-7-10. Except in Marion County, a service fee of five dollars (\$5.00) shall be added to each delinquent fee that is recorded.

Using the list recorded after September 1 of the preceding calendar year and before September 1 of the current calendar year, the officer shall, before December 15 of each year, certify to the county auditor a list of liens remaining unpaid for collection in the next May when property taxes are due.

The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

2. On receipt of the list to be certified, the county auditor shall add a fifteen dollar (\$15.00) certification fee for each lot or parcel of real property on which fees are delinquent. The fee is in addition to all other fees. The county auditor shall immediately enter on the tax duplicate all delinquent sewer charges.

3. The amount shall be due and payable not later than the due date of the next May installment of property taxes and the county treasurer shall then include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.
4. After the date of certification, in each year, the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.
5. If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.
6. At the time of each semiannual tax settlement the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges (\$5.00 each) and the certification fees (\$15.00 each) and pay over to the municipal fiscal officer the remaining fees and penalties. The county treasurer shall deposit service charges and certification fees in the county general fund.

In order for the county treasurer to pay over the collections to the city or town under (6), the collections should be receipted into a separate fund titled "Delinquent Sewer Assessments" on the records of the county auditor and county treasurer and remitted by county warrant.

SECTION D - DELINQUENT BARRETT LAW ASSESSMENTS

Whenever any Barrett Law principal and interest or any part thereof is not paid when due, the proper fiscal officer charged with the collection of the assessment for the city or town shall, before the first day of June of each year, certify to the county auditor a list of all delinquent assessments, together with a penalty of ten percent (10%) interest per annum (five percent (5%) for each six month period or fraction thereof). The list shall show the name or names of the present owner or owners of each parcel of real estate, the description of the property as shown by the records in the office of the county auditor, and the total amount of principal, interest and penalty due. [IC 36-9-37-20 to IC 36-9-37-23]

It shall be the duty of the county auditor upon receipt of such list to enter the same in a special duplicate and transmit the same to the county treasurer for collection. After the county treasurer receives the list, payments on the delinquent assessments shall be made only to the county treasurer and may not be accepted by the municipal fiscal officer. The real property on the list is subject to collection by the county treasurer in the same way that delinquent property taxes are collected and may be sold in the manner that property is sold for taxes. [IC 36-9-27-23 and IC 36-9-27-24]

Delinquent Barrett Law assessments should be entered in a separate section of the tax duplicate immediately following the taxing unit in which the real property is located.

Upon collection of delinquent Barrett Law assessments and settlement by the county treasurer the collections shall be receipted into a separate fund titled "Delinquent Barrett Law Assessments" on the records of the county auditor and county treasurer and remitted by county warrant to the city or town officer originally charged with such collection.

SECTION E - LINE FENCE ASSESSMENTS

The provisions of IC 32-10-9-3 require a partition (line) fence to be built and maintained by the landowners whose lands are separated by such fence. This law further provides, under certain procedures, for the township trustee to construct or maintain the fence, if not constructed or maintained by one of the landowners.

Where a township trustee has had such fence built, rebuilt or repaired, the trustee shall make out a certified statement in triplicate of the actual cost incurred in the building, rebuilding or repairing of such fence, one (1) copy to be handed to or mailed to the landowner affected by the work, one (1) copy to be retained by the trustee as a record for the township, and the other to be filed in the auditor's office of the county wherein said fence is located and where the lands of the landowner affected by said work are located. At the same time, the trustee shall also file with the county auditor, a claim against the county for the amount shown in the statement so filed with the county auditor. The county auditor shall examine said claim and statement as other claims are examined, and shall present the same to the board of commissioners at their next regular meeting and, unless there is an apparent error in such statement of claim, the board of commissioners shall make allowance and the county auditor shall issue a warrant therefor to the township trustee submitting the same, out of the county general fund, without any appropriation being made therefor by the county council. The amount so paid out of the county general fund shall be placed by said auditor on the tax duplicate against the lands of the landowner affected by said work, in a separate section titled "Line Fence," and shall be collected as taxes are collected, and when so collected, shall be paid into the county general fund. [IC 32-10-9-4]

SECTION F - DELINQUENT DOG TAX ASSESSMENTS

Within ten (10) days after the completion of the assessing period, the township trustee shall assess against each person who failed to pay dog tax, the amount of fees so owing and the amount of such fees shall be placed upon the tax duplicate, in a separate section, by the county auditor and collected as other taxes are collected. [IC 15-5-9-2]

Collection of the assessments, if not paid, shall be enforced in the same manner as delinquent personal property taxes and certified to the clerk of the circuit court where they become a judgment, at the same time and in the same manner as delinquent personal property taxes.

Collections by the county treasurer shall be receipted into a separate fund titled "Delinquent Dog Tax" on the records of the auditor and treasurer at the time of making the June and December settlements. Upon receipt, the county auditor shall issue a warrant to the township trustee of each township for which the collections were made.

SECTION G - WEED CUTTING ASSESSMENTS

The provisions of IC 36-7-10.1 authorize counties, cities and towns to require the owners of real estate within the unit to cut or remove weeds or other rank vegetation by ordinance.

The ordinance must specify the procedure for issuing a bill to the owner for the costs incurred by the municipality or county in abating the violation, including administrative costs and removal costs.

If the landowner fails to pay a bill within the time specified in the ordinance the unit shall certify to the county auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The county auditor shall place the total amount certified on the tax duplicate, in a separate section, and collected and enforced in the same manner as real estate taxes are collected and shall be disbursed to the general fund of the unit. [IC 36-7-10.1-4]

Collections shall be settled by the county treasurer at the June and December settlement and receipted into a fund titled "Weed Cutting Assessments." Upon receipt, the auditor shall issue a warrant to the fiscal officer of the unit for which collected.